

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD JAY WILSON,

Plaintiff,

v.

J. CASTRO, et al.,

Defendants.

Case No. 1:24-cv-00542-HBK

ORDER TO RANDOMLY ASSIGN A
DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO
DISMISS CASE WITHOUT PREJUDICE¹

FOURTEEN-DAY OBJECTION PERIOD

Pending before the Court for screening under 28 U.S.C. § 1915A is Plaintiff's Complaint. (Doc. No. 1, "Complaint"). For the reasons set forth below, the undersigned recommends the district court dismiss the Complaint without prejudice because it fails to state any cognizable federal claim but afford Plaintiff an opportunity to file an amended complaint.

SCREENING REQUIREMENT

A plaintiff who commences an action while in prison is subject to the Prison Litigation Reform Act ("PLRA"), which requires, *inter alia*, the court to screen a complaint that seeks relief against a governmental entity, its officers, or its employees before directing service upon any defendant. 28 U.S.C. § 1915A. This requires the court to identify any cognizable claims and dismiss the complaint, or any portion, if it is frivolous or malicious, if it fails to state a claim upon

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2023).

1 which relief may be granted, or if it seeks monetary relief from a defendant who is immune from
2 such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

3 At the screening stage, the court accepts the factual allegations in the complaint as true,
4 construes the complaint liberally, and resolves all doubts in the plaintiff's favor. *Jenkins v.*
5 *McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir.
6 2003). The Court's review is limited to the complaint, exhibits attached, materials incorporated
7 into the complaint by reference, and matters of which the court may take judicial notice. *Petrie v.*
8 *Elec. Game Card, Inc.*, 761 F.3d 959, 966 (9th Cir. 2014); *see also* Fed. R. Civ. P. 10(c). A court
9 does not have to accept as true conclusory allegations, unreasonable inferences, or unwarranted
10 deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Critical
11 to evaluating a constitutional claim is whether it has an arguable legal and factual basis. *See*
12 *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

13 The Federal Rules of Civil Procedure require only that a complaint include "a short and
14 plain statement of the claim showing the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2).
15 Nonetheless, a claim must be facially plausible to survive screening. This requires sufficient
16 factual detail to allow the court to reasonably infer that each named defendant is liable for the
17 misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Moss v. U.S. Secret Service*,
18 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not
19 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.
20 *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. Although detailed factual allegations are not
21 required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
22 statements, do not suffice," *Iqbal*, 556 U.S. at 678 (citations omitted), and courts "are not required
23 to indulge unwarranted inferences," *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir.
24 2009) (internal quotation marks and citation omitted).

25 If an otherwise deficient pleading can be remedied by alleging other facts, a pro se litigant
26 is entitled to an opportunity to amend their complaint before dismissal of the action. *See Lopez v.*
27 *Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d
28 245, 248 (9th Cir. 1995). However, it is not the role of the court to advise a pro se litigant on how

1 to cure the defects. Such advice “would undermine district judges’ role as impartial
2 decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131
3 n.13.

4 **BACKGROUND AND SUMMARY OF OPERATIVE PLEADING**

5 Plaintiff, a state prisoner proceeding pro se and *in forma pauperis*, initiated this action by
6 filing a civil rights complaint under 42 U.S.C. § 1983 in the Northern District of California.
7 (Doc. No. 1). The case was transferred to the Eastern District of California on May 7, 2024.
8 (Doc. No. 13). On August 8, 2024, the undersigned screened Plaintiff’s Complaint and found that
9 it failed to state any cognizable constitutional claim. (*See* Doc. No. 21). The Court advised
10 Plaintiff of the pleading deficiencies and applicable law and afforded Plaintiff the opportunity to
11 file either: (1) an amended complaint; (2) a notice to stand on the Complaint subject to the
12 undersigned recommending the district court dismiss the Complaint; or (3) a notice of voluntary
13 dismissal. (*Id.* at 11-12). On August 28, 2024, Plaintiff filed a Notice to Stand on his Complaint.
14 (Doc. No. 22).

15 The events giving rise to Plaintiff’s Complaint occurred at Kern Valley State Prison. (*See*
16 *generally* Doc. No. 1). The Complaint names the following as Defendants: (1) J. Castro,
17 Associate Warden and ADA Coordinator at Kern Valley State Prison (“KVSP”); (2) N. Igbinosa,
18 Chief Physician and Surgeon at KVSP; (3) Y. Montes, Health Care Compliance Analyst at
19 KVSP; (4) V. Bojorquez, Health Care Grievance Coordinator at KVSP; (5) S. Rimbach,
20 Associate Warden and ADA Coordinator at KVSP; (6) R. Broomfield, ADA
21 Coordinator/Custody Appeals Coordinator at KVSP; (7) Dr. Rhordanz; (8) Dr. A. Zepp; (9) S.
22 Forlong, Correctional Officer (“CO”) at KVSP, Facility C; (10) J. Ecker, CO at KVSP, Facility
23 C; (11) Rowland, CO at KVSP, Facility C; (12) Gracia, CO at KVSP, Facility C; and (13)
24 Ackuendo, Work Exchange Officer at KVSP, Facility C. (*Id.* at 5-8). Plaintiff sues all
25 Defendants in their individual and official capacities. (*Id.* at 47). Plaintiff’s Complaint numbers
26 49 handwritten pages, many of which are faint and difficult to read. (*See generally id.*)

27 The Complaint is disjointed and written in narrative-like fashion advancing several
28 seemingly unrelated claims spanning roughly five years. The allegations are not arranged in

1 sequentially numbered paragraphs. It is not clear whether the extraneous facts are provided by
2 way of background, or whether Plaintiff includes these factual averments in support of a claim.

3 To the extent discernable, the Complaint alleges that over the course of four years, from
4 2017 to 2021, various officials at KVSP, including Defendants Zepp and Rhordanz, his primary
5 care physicians, and members of the KVSP Reasonable Accommodations Panel exhibited
6 deliberate indifference to Plaintiff's serious medical needs when they denied his repeated requests
7 for an ADA cell with grab bars by the toilet and a walker with a seat.² (*See generally id.*).

8 Plaintiff also contends he was denied appropriate housing in retaliation but does not clearly
9 specify the protected conduct that prompted the retaliation. (*Id.* at 9). On December 2, 2020,
10 Plaintiff fell in his cell and broke his finger, which he implies would not have occurred if he had
11 been in an appropriate ADA cell. (*Id.* at 18-19).

12 The Complaint alleges that after Plaintiff returned from an out-to-court transfer to R.J.
13 Donovan Correctional Facility in June 2018, Defendant Rohrdanz "began slowly taking away
14 Plaintiff's much-needed chronic care pain medications" and did not order Plaintiff's ADA
15 accommodations to be met. (*Id.* at 10). Rohrdanz also began scheduling out Plaintiff's
16 appointments 90 days from when requested, instead of the usual 30 days. (*Id.* at 10-11).

17 In a seemingly unrelated incident, on February 5, 2019, while Plaintiff was on the
18 "Patio" of his yard, Defendant Forlong told Plaintiff he had to take his hat off while on the yard,
19 despite it being cold out. (*Id.* at 33-34). Plaintiff had "never had a run in with . . . Defendant
20 Forlong, for the two . . . year[s] [he was] housed on that Facility." (*Id.* at 35).

21 In another seemingly unrelated incident, on May 30, 2019, Plaintiff was attending his self-
22 help group in Dining Hall 2 when officers came to enforce a new security regulation requiring all
23 inmates to be in some form of restraint. (*Id.* at 30). Plaintiff informed Defendant Ecker that he
24 could not be placed in handcuffs, per doctor's orders, and Ecker responded with an expletive and
25 told Plaintiff he would be put in handcuffs anyway. (*Id.*). After Plaintiff insisted, Ecker finally
26 agreed to put him in waist restraints, again cursing at Plaintiff. (*Id.*). Defendant Rowland, who

27
28 ² The Complaint notes that Plaintiff's requests were ultimately granted after an attorney from the Prison
Law Office interceded on his behalf. (*Id.* at 27-28).

1 was nearby, told Ecker to “put [the waist restraints on] good an[d] tight,” which Ecker agreed to
 2 do. (*Id.* at 31). The restraints were put on Plaintiff so tightly that they cut off the blood flow to
 3 Plaintiff’s arms for over an hour and Plaintiff was refused any medical treatment. (*Id.*). Plaintiff
 4 still has marks on his arms from the restraints, years after the incident.³ (*Id.*). The Complaint
 5 alleges that Rowland directed Ecker to put the restraints on tightly in retaliation for a grievance
 6 Plaintiff filed against Defendant Rohrdanz on March 24, 2019. (*Id.*).

7 In yet another apparently unrelated incident, on or about September 21, 2021, Defendant
 8 Gracia, a correctional officer in Plaintiff’s housing unit, conspired with another inmate to defraud
 9 Plaintiff of \$427 in Plaintiff’s inmate trust account. (*Id.* at 37-38). After Plaintiff reported the
 10 fraud, Plaintiff was subjected to retaliatory actions by Defendant Gracia including repeated cell
 11 searches and seizure of Plaintiff’s medical devices. (*Id.* at 38-39).

12 Finally, on January 28, 2022, Plaintiff was attending his self-help group and was first in
 13 line to be searched by Defendant Ackuendo before being admitted to the program. (*Id.* at 40).
 14 Instead of searching Plaintiff, Defendant Ackuendo told Plaintiff he would have to go to the end
 15 of the line of ten inmates because searching him would take longer due to his disability, forcing
 16 Plaintiff to wait in the cold and rain for more than 30 minutes. (*Id.* at 40-41). Plaintiff contends
 17 Ackuendo’s treatment was retaliation for Plaintiff filing of a grievance against Defendant Gracia.
 18 (*Id.* at 42).

19 As relief, Plaintiff seeks \$5 million from each Defendant for each cause of action,
 20 unspecified injunctive relief, a trial by jury, and costs and fees. (*Id.* at 47).

21 **APPLICABLE LAW AND ANALYSIS**

22 **A. Statute of Limitations**

23 “A claim may be dismissed [for failing to state a claim] on the ground that it is barred by
 24 the applicable statute of limitations only when ‘the running of the statute is apparent on the face
 25 of the complaint.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969
 26 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)).

27
 28 ³ The Complaint states that Plaintiff still has marks “even [though] these events took place over three (3) years ago.”
 (Doc. No. 1 at 31). The incident in fact took place nearly five years ago.

1 Such a dismissal is proper so long as Plaintiff is provided an opportunity to amend in order to
2 allege facts which, if proved, might support tolling. *Cervantes v. City of San Diego*, 5 F.3d 1273,
3 1276–77 (9th Cir. 1993) *see also Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning*
4 *Agency*, 216 F.3d 764, 788 (9th Cir. 2000) (court may raise the defense of statute of limitations
5 *sua sponte*), overruled on other grounds by *Gonzalez v. Arizona*, 677 F.3d 383, 389 (9th Cir.
6 2011) (en banc); *Hughes v. Lott*, 350 F.3d 1157, 1163 (11th Cir. 2003) (upholding *sua sponte*
7 dismissal under 28 U.S.C. § 1915(e)(2)(B) of prisoner's time-barred complaint).

8 Because section 1983 contains no specific statute of limitation, federal courts apply the
9 forum state's statute of limitations for personal injury actions. *Jones v. Blanas*, 393 F.3d 918, 927
10 (9th Cir. 2004); *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); *Fink v. Shedler*, 192
11 F.3d 911, 914 (9th Cir. 1999). California's statute of limitations for personal injury actions is two
12 years. *Jones*, 393 F.3d at 927 (citing Cal. Code Civ. Proc. § 335.1). The law of the forum state
13 also governs tolling. *Wallace v. Kato*, 549 U.S. 384, 394 (2007) (citing *Hardin v. Straub*, 490
14 U.S. 536, 538–39 (1989)); *Jones*, 393 F.3d at 927 (noting that in actions where the federal court
15 borrows the state statute of limitation, the federal court also borrows all applicable provisions for
16 tolling the limitations period found in state law). Under California law, the statute of limitations
17 for prisoners serving less than a life sentence is tolled for two years. Cal. Code Civ. Proc..
18 § 352.1(a); *Johnson v. California*, 207 F.3d 650, 654 (9th Cir. 2000), overruled on other grounds,
19 543 U.S. 499 (2005). Accordingly, the effective statute of limitations for most California
20 prisoners is four years (two-year limitations period plus two years statutory tolling).

21 Unlike the length of the limitations period, however, “the accrual date of a § 1983 cause
22 of action is a question of federal law that is not resolved by reference to state law.” *Wallace*, 549
23 U.S. at 388; *Hardin*, 490 U.S. at 543–44 (federal law governs when a § 1983 cause of action
24 accrues). “Under the traditional rule of accrual . . . the tort cause of action accrues, and the statute
25 of limitation begins to run, when the wrongful act or omission results in damages.” *Wallace*, 549
26 U.S. at 391. Put another way, “[u]nder federal law, a claim accrues when the plaintiff knows or
27 has reason to know of the injury which is the basis of the action.” *Maldonado*, 370 F.3d at 955;
28 *Two Rivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).

1 It is clear from the face of the Complaint that some of the incidents giving rise to
 2 Plaintiff's claims occurred more than four years before he filed his Complaint on April 4, 2024.
 3 For example, his claims based on his initial denial of an ADA cell at KVSP in March 2017, his
 4 claim against Defendant Rohrdanz for taking away his chronic pain medications beginning in
 5 June 2018, his claim against Defendant Forlong based on a February 5, 2019 incident in which
 6 Forlong made Plaintiff take off his warm cap, and his claim against Defendants Ecker and
 7 Rowland for placing overtight waist restraints on him in May 2019 all appeared to be time-barred.

8 Wilson's claims could be considered timely if, in his Complaint, he alleged facts sufficient
 9 to show the limitations period may be equitably tolled. *See Cervantes*, 5 F.3d at 1276–77.
 10 Generally, federal courts also apply the forum state's law regarding equitable tolling. *Fink*, 192
 11 F.3d at 914; *Bacon v. City of Los Angeles*, 843 F.2d 372, 374 (9th Cir. 1988). Under California
 12 law, however, Plaintiff must meet three conditions to equitably toll the statute of limitations: (1)
 13 he must have diligently pursued his claim; (2) his situation must be the product of forces beyond
 14 his control; and (3) Defendants must not be prejudiced by the application of equitable tolling. *See*
 15 *Hull v. Central Pathology Serv. Med. Clinic*, 28 Cal. App. 4th 1328, 1335 (Cal. Ct. App. 1994);
 16 *Addison v. State of California*, 21 Cal.3d 313, 316–17 (1978); *Fink*, 192 F.3d at 916. Wilson has
 17 not pled any facts which would explain why he did not diligently pursue his claims arising
 18 between 2017 and 2019 or what “forces beyond his control” prevented him from filing this action
 19 earlier. Thus, he has not plausibly alleged a claim for equitable tolling. *See Cervantes*, 5 F.3d at
 20 1277; *Iqbal*, 556 U.S. at 679; *Hinton v. Pac. Enters.*, 5 F.3d 391, 395 (9th Cir. 1993) (plaintiff
 21 carries the burden to plead facts which would give rise to equitable tolling); *see also*
 22 *Kleinhammer v. City of Paso Robles*, 385 Fed. App'x. 642, 643 (9th Cir. 2010). Rather than
 23 address the apparent statute of limitations issue, Plaintiff elects to stand on his Complaint. Thus,
 24 the Court presumes that Plaintiff disputes that the claims noted above untimely.

25 **B. Rule 8**

26 Rule 8(a) of the Federal Rules of Civil Procedure requires a “short and plain statement of
 27 the claim.” Fed. R. Civ. P. 8(a)(2). Rule 8 states that “[e]ach allegation must be simple, concise,
 28 and direct.” *Id.*, 8(d)(1). A complaint having the factual elements of a cause of action scattered

1 throughout the complaint and not organized into a “short and plain statement of the claim” may
 2 be dismissed for failure to satisfy Rule 8(a). *See Sparling v. Hoffman Constr. Co.*, 864 F.2d 635,
 3 640 (9th Cir. 1988); *see also McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996). Rule 10(b) of the
 4 Federal Rules of Civil Procedure also requires a plaintiff to state claims in “numbered paragraphs,
 5 each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b).
 6 Moreover, “[i]f doing so would promote clarity, each claim founded on a separate transaction or
 7 occurrence . . . must be stated in a separate count.” *Id.* It is not the responsibility of the Court to
 8 review a rambling narrative to determine the number and nature of a plaintiff’s claims. *Howard*
 9 *v. Nunley*, 2009 WL 30304, at *1 (E.D. Cal. Jan. 6, 2009).

10 To ensure compliance with Rule 8, courts of the Eastern District of California generally
 11 limit complaints to twenty-five pages. *See Lal v. United States*, 2022 WL 37019, at *2 (E.D. Cal.
 12 Jan. 3, 2022); *Williams v. Corcoran State Prison*, 2022 WL 1093976, at *1 (E.D. Cal. Apr. 12,
 13 2022). The page limit includes the complaint itself and any exhibits, for a total of twenty-five
 14 pages. *See Rivas v. Padilla*, 2022 WL 675704, at *2 (E.D. Cal. Mar. 7, 2022). “[A] lengthy
 15 complaint can violate Rule 8 if a defendant would have difficulty responding to the complaint.”
 16 *Skinner v. Lee*, 2021 WL 6617390, *2-*3 (C. D. Cal. May 20, 2021) (citing *Cafasso v. Gen.*
 17 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011). A court has the power to dismiss a
 18 complaint when a plaintiff fails to comply with Rules 8’s pleading directives. *McHenry*, 84 F.3d
 19 at 1179; *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981).

20 Plaintiff’s Complaint numbers 49 handwritten pages, and consists of a lengthy, rambling
 21 narrative spanning five years. The Complaint is not organized into numbered paragraphs, as
 22 required by Fed. R. Civ. P. 10(b), nor does it identify distinct claims or counts. It fails to set forth
 23 claims in “short and plain” statements what each Defendant did to violate his rights, and thus
 24 violates Rule 8. *See Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (recognizing that Rule
 25 8 can be violated when the plaintiff provides too much information). Due to these deficiencies,
 26 the Court cannot meaningfully evaluate the Complaint, as required by 28 U.S.C. § 1915A(a). *See*
 27 *Howard*, 2009 WL 30304, at 1.

28 As set forth more below, the Complaint also includes numerous unrelated claims that

cannot be properly joined in a single lawsuit. The Court warned Plaintiff in its August 8, 2024 screening order that if he failed to file an amended complaint containing a more focused set of claims against a smaller set of Defendants, he may be subject to sanctions, including the undersigned recommending the District Court dismiss this case for failure to comply with Rule 8. (Doc. No. 21 at 9). Plaintiff elected to stand on his Complaint rather than file an amended complaint curing the deficiencies in the initial Complaint. Thus, the undersigned recommends the district court dismiss the Complaint based on Plaintiffs failure to comply with Rule 8.

C. Related Claims and Joinder

The Rules permit a complaint to include all related claims against a party and permit joinder of all defendants alleged to be liable for the “same transaction, occurrence, or series of transactions or occurrences” where “any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 18(a) and 20(a)(2) (emphasis added). But the Rules do not permit conglomeration of unrelated claims against unrelated defendants in a single lawsuit. Further, just “because the claims arose while Plaintiff was at the same institution does not make the claims properly joined.” *Camposeco v. Bordeaux*, 2020 WL 5984420, at *5 (E.D. Cal. Jul. 31, 2020).

The controlling principle appears in Fed. R. Civ. P. 18(a): ‘A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.’ Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g).

K’napp v. California Dept. of Corrections, 2013 WL 5817765, at *2 (E.D. Cal., Oct. 29, 2013), aff’d sub nom. *K’napp v. California Dept. of Corrections & Rehabilitation*, 599 Fed. Appx. 791 (9th Cir. 2015) (alteration in original) (quoting *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)). Here, the Complaint alleges claims based on at least nine incidents that span five years and involve 13 different Defendants. The fact that the claims all allege actions by staff within the

1 same facility is not sufficient to establish that they are related and therefore properly joined. *See*
2 *Camposeco*, 2020 WL 5984420 at *5 (“Merely because the claims arose while Plaintiff was at the
3 same institution does not make the claims properly joined.”).

4 Plaintiff’s Complaint presents just the sort of “morass” that the PLRA and the joinder
5 rules are intended to prevent. *K’napp*, 2013 WL 5817765, at *2. Although some of Plaintiff’s
6 claims appear to be related, many are not. For example, the February 2019 incident involving
7 Defendant Forlong telling Plaintiff to remove his hat while on the yard, the May 2019 incident
8 involving the placement of waist restraints on Plaintiff, the September 2021 incident in which
9 Defendant Gracia defrauded Plaintiff of \$427 and the January 2022 incident where Plaintiff was
10 forced by Defendant Ackuendo to wait 30 minutes in the rain for his self-help class have no
11 apparent connection to the denials of Plaintiff’s requests for medical accommodations or denial of
12 his requested pain medication. Nor are these incidents obviously connected to each other, except
13 by Plaintiff’s vague contention that all of the Facility C staff have animus against him and are
14 retaliating against Plaintiff on each other’s behalf.

15 The Complaint is devoid of facts alleging that all of these disparate incidents and claims
16 arise from the same transaction, occurrence, or series of transactions or occurrences.
17 Accordingly, they are misjoined. If Plaintiff wishes to pursue the claims asserted here, he must
18 file them under separate actions.

19 **D. ADA/RA Claims**

20 Title II of the ADA and the RA apply to inmates within state prisons. *Pennsylvania Dept.*
21 *of Corrections v. Yeskey*, 524 U.S. 206 (1998); *see also Armstrong v. Wilson*, 124 F.3d 1019,
22 1023 (9th Cir. 1997); *Duffy v. Riveland*, 98 F.3d 447, 453–56 (9th Cir.1996). To state a claim
23 under the ADA, plaintiff must have been “improperly excluded from participation in, and denied
24 the benefits of, a prison service, program, or activity on the basis of his physical handicap.”
25 *Armstrong*, 124 F.3d at 1023. “To establish a violation of [Section] 504 of the RA, a plaintiff
26 must show that (1)[he] is handicapped within the meaning of the RA; (2)[he] is otherwise
27 qualified for the benefit or services sought; (3)[he] was denied the benefit or services solely by
28 reason of [his] handicap; and (4) the program providing the benefit or services receives federal

1 financial assistance.” *Id.* Because Plaintiff’s Complaint suffers from the basic deficiencies noted
2 above, the Court cannot meaningfully evaluate Plaintiff’s claims under the ADA and RA.
3 Nonetheless, the Court provided Plaintiff with the applicable law should he wish to proceed on an
4 ADA or RA claim in his amended complaint.

5 CONCLUSION

6 The Court pointed out the above deficiencies in its August 8, 2024 Screening Order. (*See*
7 Doc. No. 21 at 9, 11-12). Specifically, the Court advised Plaintiff that his Complaint failed to
8 comply with Rules 8 and 10, contained misjoined claims, and failed to state a claim, but afforded
9 Plaintiff the opportunity to file an amended complaint. The Court further instructed Plaintiff that
10 is he chose to amend his complaint he must select only those related claims and show a causal
11 connection between a Defendant’s actions and/or failure to act and the alleged violation. Further,
12 given the difficulty in reading Plaintiff’s Complaint, the Court directed Plaintiff to ensure that his
13 amended complaint is legible, preferably typewritten or if handwritten he must use dark ink, and
14 the amend complaint may be no more than 25 pages. The Court advised Plaintiff that he also
15 must identify each cause of action or claim, and then briefly list the facts in support of each cause
16 of action in sequentially numbered paragraphs. The amended complaint should not contain
17 extraneous information, such as the history of Plaintiff’s health care issues at other institutions or
18 diary-like descriptions of events. As noted *supra*, Plaintiff elected not to file an amended
19 complaint, instead wish to stand on his Complaint.

20 RECOMMENDATION

21 Based on the above, the undersigned finds Plaintiff’s Complaint fails to comport with the
22 Court’s rules of procedure and otherwise fails to state any cognizable claim. The undersigned
23 recommends that the district court dismiss the Complaint without prejudice to Plaintiff refiling an
24 amended complaint as directed above on those claims that are related and are not barred by the
25 statute of limitations.

26 ACCORDINGLY, it is **ORDERED**:

27 The Clerk of Court randomly assign this case to a district judge for consideration of these
28 Findings and Recommendation.

1 It is further **RECOMMENDED**:

2 The Complaint (Doc. No. 1) be dismissed under § 1915A for failure to state a claim
3 without prejudice and Plaintiff be afforded an opportunity to file an amended complaint as
4 directed above.

5 **NOTICE TO PARTIES**

6 These Findings and Recommendations will be submitted to the United States District
7 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
8 after being served with a copy of these Findings and Recommendations, a party may file written
9 objections with the Court. *Id.*; Local Rule 304(b). The document should be captioned,
10 “Objections to Magistrate Judge’s Findings and Recommendations.” The assigned District Judge
11 will review these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party’s
12 failure to file objections within the specified time may result in the waiver of certain rights on
13 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

14 Dated: August 29, 2024

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16 HELENA M. BARCH-KUCHTA
17 UNITED STATES MAGISTRATE JUDGE
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